

**NATIONAL MARINE SANCTUARIES
PROGRAM
AMENDMENTS ACT OF 1992**

Mr. HOLLINGS, from the Committee on Commerce, Science,
and Transportation, submitted the following

REPORT

OF THE

**SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

ON

S. 2788



SEPTEMBER 18 (legislative day, SEPTEMBER 8), 1992.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1992

areas as marine sanctuaries. Whereas individual marine resources, such as fish and marine mammals, may be managed under separate statutes, title III of the MPRSA provides a mechanism to protect and manage comprehensively entire marine ecosystems. Other goals of the program include facilitation of multiple uses of sanctuary resources (whereas compatible with sanctuary objectives) and promotion and coordination of public education and scientific research in sanctuaries.

Under title III, the Secretary of Commerce (Secretary) may designate an area as a marine sanctuary if the site is of special national significance due to its resources or human-use value. Potential sanctuaries are evaluated on the basis of their ecological, conservation, educational, historical, aesthetic, recreational, or research value. Marine sanctuaries may be located in either State or Federal waters from the tidal limit to the outer limit of the U.S. Exclusive Economic Zone (EEZ), or in the Great Lakes.

NOAA, through the Office of Ocean and Coastal Resource Management, is responsible for implementing title III of the MPRSA. For each proposed marine sanctuary, NOAA must develop an environmental impact statement, a management plan, and regulations. Fishing regulations for sanctuaries are prepared by the appropriate Regional Fishery Management Council, and are approved by the Secretary.

1988 AMENDMENTS TO TITLE III OF THE MPRSA

Although six marine sanctuaries were designated between 1972 and 1981, only one sanctuary was designated during the following 7 years. In response, Congress significantly amended title III as part of the 1988 reauthorization of the program pursuant to the Marine Sanctuaries Program Authorization Act of 1988 (P.L. 100-627) (1988 amendments). The 1988 amendments addressed two main issues: (1) designation procedures for sanctuaries; and (2) destruction of sanctuary resources. In amending the designation procedure, Congress established a time limit of 30 months for the process, which had taken many years with respect to some sanctuaries. Furthermore, under the 1988 amendments, the Secretary was required to designate or study eight specific sites as candidates for the marine sanctuary program. With respect to the destruction of sanctuary resources, the 1988 amendments provided the Secretary with the authority to use funds recovered from those who damage sanctuary resources to restore and manage the sanctuary.

RECENT CONGRESSIONAL ACTION

Since the 1988 amendments, Congress has acted on some specific aspects of the marine sanctuary program. For instance, in 1989, following considerable controversy over regulation of oil and gas activities in the Cordell Banks Marine Sanctuary (off the coast of California), Congress adopted a ban on oil and gas activity throughout the sanctuary. Furthermore, in response to three successive freighter groundings in the Florida Keys, Congress passed a bill in November 1990 designating the Florida Keys National Marine Sanctuary. This sanctuary represents the largest marine sanctuary

to date, and efforts continue to develop a management plan addressing the heavy environmental stresses in the Keys region.

MARINE SANCTUARY REVIEW PANEL REPORT

In November 1990, NOAA's Assistant Administrator for Ocean Services assigned the task of evaluating the National Marine Sanctuary program and making recommendations to strengthen it to a broad-based independent review panel. The panel consisted of representatives from the public and private sectors. The report from this group, distributed in February 1991, raised a number of issues. Its recommendations formed the basis for some of the provisions in S. 2788 as reported and are as follows.

Sanctuary Funding. The panel strongly supported providing the National Marine Sanctuary Program with an adequate budget to accomplish the purposes of the existing sanctuaries, to establish new sanctuaries, and to administer the overall program. It recommended annual funding of \$30 million for the program.

The panel also recommended that additional methods to secure funds be explored. It suggested: (1) implementing user fees; (2) increasing civil penalties for violations in sanctuaries; and (3) establishing concession arrangements.

Sanctuary Management.—The panel made a number of recommendations addressing improvements in sanctuary management. First, the report maintained that the program needs to be given higher visibility and status within NOAA and elevated to the "Office" level. In addition, the panel recommended that the sanctuary program staff should examine programs in other countries, such as the Great Barrier Reef Marine Park Authority in Australia, which are successful examples of marine ecosystem protection. Last, the panel recommended that the program needs to increase its efforts to develop effective working relationships with other Federal agencies as well as other institutions and organizations with related interests.

Sanctuary Direction.—The panel highlighted the fact that there has been a distinct lack of long-range vision or goals in the National Marine Sanctuary Program. The panel recommended that this issue be addressed by setting distinct goals for the program and providing for periodic independent reviews.

Education and Research.—The panel called for the development of a research and education agenda by the National Marine Sanctuary Program. Specifically, the panel noted that the Marine Sanctuary Program could benefit from studying research initiatives of the Estuarine Research Reserve Program and the National Park Service.

LEGISLATIVE HISTORY

The Committee and the National Ocean Policy Study held an oversight hearing on the National Marine Sanctuary Program on March 25, 1992. Witnesses included representatives from NOAA, the National Ocean Industries Association, the State of Massachusetts, the National Fisheries Institute, the Center for Marine Conservation, and the Washington Public Ports Association.

S. 2788 was introduced on May 21, 1992, by Senator Kerry and is cosponsored by Senators Hollings and Stevens. In addition, two other bills relating to the marine sanctuary program have been introduced in the Senate and referred to the Commerce Committee. On May 21, Senator Inouye introduced S. 2786, the "Hawaiian Islands National Marine Sanctuary Act," and, on the same day, Senator Stevens introduced S. 2770, the "National Marine Sanctuaries Program Amendments of 1992," the Administration's bill, by request.

On June 16, 1992, in open executive session, the Committee considered S. 2788. Two amendments were offered. Senator Inouye offered an amendment adding the text of S. 2786, the "Hawaiian Islands National Marine Sanctuary Act," to S. 2788. Senator Kerry offered an amendment adding to S. 2788 the text of S. J. Res. 220, designating the Provasoli—Guillard Center for the Culture of Marine Phytoplankton in West Boothbay Harbor, Maine, as a National Center and Facility. Both amendments were agreed to by the Committee. The bill, as amended, was ordered reported by voice vote without objection.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 2788 authorizes appropriations for title III of the MPRSA of \$10 million for FY 1993, \$12.5 million for FY 1994, and \$15 million for FY 1995. In addition, the legislation makes other changes to the MPRSA, including:

- streamlining the designation process for proposed sanctuaries by eliminating the requirement that Congressional committees be provided with a prospectus for each designation;
- deleting the 30-month deadline for completion of the sanctuary designation process;
- encouraging the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency (EPA) to furnish the Secretary with information regarding any past, present, or proposed future disposal of materials (including hazardous and radioactive wastes) at proposed sanctuary sites;
- requiring Federal agencies that determine that their activities are likely to harm sanctuary resources to consult with the Secretary; and
- clarifying that, consistent with international law, the authority provided by title III of the MPRSA applies to and is enforceable with respect to the 12-mile U.S. territorial limit and to the 200-mile limit of the U.S. Exclusive Economic Zone (EEZ).

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 7, 1992.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2788, the National Marine Sanctuaries Program Amendments Act of 1992.

Enactment of S. 2788 would affect direct spending and receipts and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2788.
2. Bill title: National Marine Sanctuaries Program Amendments Act of 1992.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation on June 16, 1992.
4. Bill purpose: S. 2788 would amend the Marine Protection, Research, and Sanctuaries Act of 1972 to expand the purposes and policies of the act, clarify the definition of "marine environment," and add new requirements regarding sanctuary designation and implementation, international cooperation, prohibited activities, enforcement, and damage payments. In addition, the bill would authorize appropriations for the marine sanctuary program for fiscal years 1993 through 1995, establish advisory councils to advise the Secretary of Commerce regarding the designation and management of marine sanctuaries, and designate the Provasoli-Guillard Center for the Culture of Marine Phytoplankton as a national center and facility. The bill also would establish a Hawaiian Islands Humpback Whale Sanctuary and would authorize funds to carry out the designation of the new sanctuary.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1993	1994	1995	1996	1997
Authorizations:					
Authorization level.....	11	13	15	0	0
Estimated outlays.....	6	11	13	6	2
Estimated revenues.....	(¹)	(¹)	(¹)	(¹)	(¹)
Direct spending:					
Estimated budget authority.....	(¹)	(¹)	(¹)	(¹)	(¹)
Estimated outlays.....	(¹)	(¹)	(¹)	(¹)	(¹)

¹ Less than \$500,000.

The costs of this bill fall within budget function 300.

Basis of estimate: CBO assumes that all funds authorized would be appropriated and that spending would occur at historical rates. In addition, CBO expects that funding for the advisory councils established in the bill would come from the authorized funds.

Under current law, NOAA has the authority to collect civil penalties for violations of regulations protecting marine sanctuaries from environmental damage. Penalties owed under the Marine Protection, Research, and Sanctuaries Act of 1972 receive no preference over amounts owed to other creditors in the case of an individual who cannot meet debt obligations. Section 9 of the bill would allow NOAA to receive priority treatment over other creditors when making a claim on a vessel. In addition, the section would increase from \$50,000 to \$125,000 the maximum civil penalty per violation. Based on information from NOAA, CBO estimates that this section would cause a negligible increase in receipts. Because the agency has the authority to spend such receipts, there would also be a small increase in direct spending resulting from the collection of these receipts.

In addition to levying civil penalties, NOAA has the authority to charge individuals who injure or damage sanctuary resources for the cost of the damage sustained. Under current law, interest does not accrue on damage assessments. Under section 12 of the bill, interest would accrue on any outstanding damage payments owed under the Marine Protection, Research, and Sanctuaries Act. CBO estimates that this section would cause a negligible increase in revenues and a corresponding small increase in direct spending from these collections. The total increase in revenues and in direct spending from sections 9 and 12 would amount to less than \$500,000 a year.

CBO expects that establishing the Hawaiian Islands Humpback Whale Sanctuary would result in only those costs (\$800,000) authorized for the sanctuary. The creation of another sanctuary could increase receipts from penalties, but this increase would depend on a number of factors that cannot be predicted at this time, such as the amount of traffic in the sanctuary or the amount of the fines that would typically be assessed. Any such receipts are not likely to be significant. In addition, CBO estimates that establishing the sanctuary would not result in a loss of receipts from mineral leasing activity. Based on information from the Department of the Interior, it appears that no mineral leases are currently in place in the designated areas.

6. Pay-as-you-go considerations: Title II and sections 9 and 12 of the bill would result in small increases in receipts and direct spending. CBO estimates that these amounts would be less than \$500,000 in each fiscal year.

7. Estimated cost to state and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On June 5, 1992, CBO prepared an estimate for H.R. 4310, the National Marine Sanctuaries Reauthorization and Improvement Act of 1992, as ordered reported by the House Committee on Merchant Marine and Fisheries. This bill is similar to the one reported in the House. The two cost estimates differ primarily because the funding authorized in S. 2788 is less than that in H.R. 4310.

10. Estimate prepared by: Patricia Conroy.

11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

S. 2702, as reported, authorizes appropriations to continue the National Marine Sanctuary Program and makes other changes to existing law. Overall, the reported bill will have little economic impact or effect on the number of individuals regulated, the privacy of individuals, or the paperwork required, as it extends and clarifies an existing program. However, the legislation's designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary will result in some increased regulations for the specific area designated.

SECTION-BY-SECTION ANALYSIS

TITLE I—AMENDMENTS TO MPRSA

Section 1.—Short title

The reported bill is entitled the National Marine Sanctuaries Program Amendments Act of 1992.

Section 101.—Findings

This section amends section 301(a)(2) of the MPRSA to add to the findings that areas of the marine environment may possess qualities which give them special national, or, in some instances, international significance.

Section 102.—Purposes and policies

This section amends section 301(b) of the MPRSA to include in the purposes and policies that the development of plans to protect and manage sanctuaries should be coordinated among Federal agencies, State and local governments, Native American tribes, international organizations, and other appropriate public and private groups.

Section 103.—Definitions

This section amends the definition of damage in title III of the MPRSA to include the cost of long-term monitoring of the affected sanctuary resources. Since monitoring costs can equal or even exceed the initial restoration or replacement work, the bill as reported provides express confirmation that these costs are intended as part of damages to be recovered.

Section 104.—Sanctuary designation standards

Section 104(a) amends section 303(a)(2)(b) of the MPRSA to conform the statute with current program operations. The sanctuary management plan and regulations supplement areas where existing authorities do not fully address protection of sanctuary resources and qualities. Thus, a required finding that existing au-

thorities should be supplemented more clearly reflects current designation, operations, and management.

Section 104(b) amends section 303(b)(3) of the MPRSA to include that governmental uses of proposed sanctuary areas must be documented in the resource assessment report as part of the environmental impact statement required for sanctuary designation. The section is further amended under section 104(c) to state that the Secretary of Defense, the Secretary of Energy, and the EPA Administrator should furnish the Secretary with information regarding any past, present, or proposed future disposal of materials, including any disposal of hazardous substances, hazardous wastes, or radioactive wastes at proposed sanctuary sites. Public disclosure of such information by the Secretary would be limited by national security or other restrictions that apply to the agency furnishing the information.

Section 105.—Procedures for designation and implementation

Section 105(a) amends section 304(a) of the MPRSA to streamline the designation process by providing to congressional committees documents, including an "executive summary" to the Draft Environmental Impact Statement (DEIS) for a proposed sanctuary, in lieu of a prospectus. Information contained in the prospectus largely duplicates that contained in the DEIS, draft management plan, and draft regulations for a proposed sanctuary. This section also amends the fishing regulation provision to provide for cooperation with other appropriate fishery management authorities.

Section 105(b) amends section 304(b)(1) of the MPRSA to delete the 30-month deadline for completion of the sanctuary designation process. The original statute had no such time limit. The deadline was added by the 1988 amendments. Although it may be possible for some sanctuaries to be designated in 30 months, experience has shown that the designation process frequently requires more time.

Section 105(c) amends section 304 of the MPRSA to add a new subsection (d), entitled "Interagency Cooperation." This subsection sets a process for review and consultation with the Secretary for any Federal agency actions, internal or external to a National Marine Sanctuary, which are likely to destroy, cause the loss of, or injure any sanctuary resource or quality. Federal agency actions would include private activities authorized by licenses, leases, or permits. The process under this subsection would require the Federal agency proposing the action to describe the action and potential impacts on sanctuary resources in a written statement to the Secretary no later than 90 days before the final approval of the action (unless the Secretary and the Federal agency agree to a different schedule). If the Secretary finds that the Federal agency action may damage sanctuary resources, the Secretary must recommend reasonable and prudent alternatives within 60 days of receipt of the information. The Federal agency then is required to consult with the Secretary on the alternatives and, if the alternative measure is not followed, to provide a written statement explaining the reasons for such a decision.

Section 105(d) requires a 5-year review of the management of individual marine sanctuaries to evaluate the progress toward fulfilling the purposes and policies of title III of the MPRSA.

Section 106.—Application of regulations; international cooperation

Section 106(a) amends section 305 of the MPRSA to clarify that, consistent with international law, the authority provided by title III of the MPRSA applies to and is enforceable with respect to the 12-mile U.S. territorial sea limit and to the 200-mile limit of the U.S. EEZ. This change is not intended to limit the scope of the program's jurisdiction, but rather to make clear that the 12-mile territorial sea and the EEZ are included.

Section 106(b) amends section 305 of the MPRSA to require that the Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, cooperate with other governments and international agencies to further the purposes and policies of the MPRSA in a manner consistent with applicable regional and multilateral arrangements.

Section 107.—Prohibited activities

This section amends section 306 of the MPRSA to create a new section entitled "Prohibited Activities." The section expressly prohibits the violation of any provision of title III of the MPRSA or any regulation or permit issued pursuant to title III of the MPRSA. The section also contains provisions to prohibit interference with enforcement actions under the MPRSA.

Section 108.—Enforcement

Section 108(a) amends section 307(c)(1) of the MPRSA to raise the amount of the civil penalty provision from \$50,000 to \$125,000. Section 307(c)(3) also would be amended to provide express authority to obtain a maritime lien on vessels used in violating title III of the MPRSA.

Section 108(b) amends section 307(d)(1) of the MPRSA to clarify that forfeiture claims are not subject to set-off against sanctuary resource damage claims or civil penalties. The Department of Justice and NOAA have interpreted title III of the MPRSA to allow separate recoveries not subject to set-off. The change clarifies this authority and will assist the program in recovering amounts sufficient to restore damaged resources.

Section 108(c) amends section 307(e) of the MPRSA to expand the allowable uses of forfeiture proceeds to include support for enforcement activities.

Section 109.—Research, monitoring, and education

Section 109 adds a new section to the MPRSA, entitled "Research, Monitoring, and Education," which would incorporate the Secretary's marine sanctuary research and education responsibilities previously set forth in section 306 of the MPRSA. Section 109(a) requires the Secretary to conduct research, monitoring, evaluation, and education programs which are necessary and reasonable to carry out the purposes of title III of the MPRSA.

Section 110.—Cooperative agreements and donations

Section 110 amends section 311 of the MPRSA to grant the Secretary the express authority to provide financial assistance for research, monitoring, evaluation, and education. It also authorizes

the Secretary to solicit and accept donations to further the purposes of title III of the MPRSA, and clarifies that donations are gifts or bequests to the United States for the public purposes of carrying out the goals of the title.

Section 111.—Destruction or loss of, or injury to, sanctuary resources

Section 111(a) amends section 312(a)(1) of the MPRSA to specify that nothing in the Act of March 3, 1851 (46 U.S.C. 183 et seq.), limits the liability of any person under title III of the MPRSA.

Section 111(b) amends section 312(a)(3) of the MPRSA to clarify one of the defenses to liability. The defense under subparagraph (B) under that section—destruction or loss of, or injury to, sanctuary resources caused by an activity authorized by Federal or State law—would be clarified to indicate that the defense applies only to those activities specifically authorized by a State or Federal law and which were carried out in compliance with any required permit or license.

Section 111(c) amends section 312(a) of the MPRSA to provide for the recovery of administrative costs and expenses of sanctuary resources damage cases. It also adds provisions, similar to those in the Oil Pollution Act of 1990, to recover interest, including prejudgment interest as damages.

Section 111(d) amends section 312(d) of the MPRSA concerning Federal-State coordination to specify that the agreement required between a Governor and the Secretary, with respect to use of monies recovered for damage to resources within State waters in a sanctuary, be entered into within 120 days of receipt of the funds pursuant to a court decree or settlement agreement. In the event that an agreement between the Secretary and the State is not reached, the Secretary is authorized to use amounts recovered consistent with the court decree or settlement agreement.

Section 112.—Authorization of appropriations

This section amends section 313 of the MPRSA to authorize appropriations for fiscal years (FY) 1993 through 1995: \$10,000,000 for FY 1993; \$12,500,000 for FY 1994; and \$15,000,000 for FY 1995.

Section 113.—Advisory councils

Section 113 adds to the MPRSA a new section 315, entitled "Advisory Councils." This section authorizes the Secretary to establish advisory councils, as appropriate, to advise in the development and management of individual sanctuaries.

Section 114.—Provasoli-Guillard Center for Culture of Marine Phytoplankton

This section designates the Provasoli-Guillard Center for the Culture of Marine Phytoplankton in West Booth bay Harbor, Maine, as a National Center and Facility.

TITLE II—HAWAII ISLANDS HUMPBACK WHALE SANCTUARY

Section 201.—Short title

This section cites the short title of title II of the bill as the "Hawaiian Islands National Marine Sanctuary Act."

Section 202.—Findings

This section includes findings describing the importance of the Hawaiian Islands marine environment.

Section 203.—Definitions

This section contains definitions of four terms used in the title: "adverse impact"; "habitat"; "sanctuary"; and "Secretary". In particular, the term "habitat" is defined as the portion of the marine environment important to the survival of the humpback whales.

Section 204.—Policy and purpose

This section states the policy of the title, which is to protect and preserve the humpback whale and its habitat within the Hawaiian Islands marine environment. The purpose is to protect the whales and their habitat in the sanctuary area, manage human uses there, and provide public education.

Section 205.—Designation of sanctuary

This section designates specified submerged lands and waters off the coast of the islands of Lanai, Maui, Kahoolawe, and Molokai as the Hawaiian Islands of Humpback Whale National Marine Sanctuary. Further, the section allows the Governor of Hawaii to certify to the Secretary that the designation is unacceptable. If such certification occurs, the designation will not include the area of the sanctuary lying within them seaward boundary of the State of Hawaii. The section also provides for modification of the sanctuary's boundary by the Secretary, in consultation with the Governor of Hawaii, and for the periodic review of additional areas and resources that should be included in the sanctuary.

Section 206.—Comprehensive management plan

This section calls for the development and issuance of a comprehensive management plan by the Secretary within 18 months after the date of enactment of the legislation. This section summarizes the provisions that must be included in the plan, including the provisions addressing Defense Department activities.

Section 207.—Authorization of appropriations

This section authorizes appropriations of \$500,000 for FY 1993 and \$300,000 for FY 1994 for the purposes of this title.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

Section 301 of that Act

SEC. 301. FINDINGS, PURPOSES, AND POLICIES.

(a) FINDINGS.—The Congress finds that—

(1) * * *

(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational or esthetic qualities which give them special national *and, in some instances, international* significance;

(3) through (5) * * *

(b) PURPOSES AND POLICIES.—The purposes and policies of this title are—

(1) through (3) * * *

(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment; [and]

(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities[.]

(6) *to develop coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas; and*(7) *to create models of and incentives for ways to protect and conserve these marine areas.*

Section 302 of that Act

SEC. 302. DEFINITIONS.

As used in this title, the term—

(1) through (5) * * *

(6) “damages” includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;

[and]

(B) the cost of damage assessments under section 312(b)(2); and

(C) *the cost of long-term monitoring of the affected sanctuary resources;*

(7) through (8) * * *

Section 303 of that Act

C. 303. SANCTUARY DESIGNATION STANDARDS.

a) STANDARDS.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary—

(1) determines that the designation will fulfill the purposes and policies of this title; and

(2) finds that—

(A) the area is of special national significance due to its resource or human-use values;

(B) existing State and Federal authorities [are inadequate] *should be supplemented* to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(C) through (D) * * *

(b) FACTORS AND CONSULTATIONS REQUIRED IN MAKING DETERMINATIONS AND FINDINGS.—

(1) FACTORS.—* * *

(2) CONSULTATION.—* * *

(3) RESOURCE ASSESSMENT REPORT.—In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section 304(a)(1), a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial, *governmental*, or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior.

(4) INFORMATION ON DISPOSAL OF MATERIALS.—*The Secretary of Defense, the Secretary of Energy, and the Administrator should furnish the Secretary with information in their possession regarding any past, present, or proposed future disposal of materials in the area under consideration, including any disposal of hazardous substances, hazardous wastes, or radioactive wastes. Public disclosure by the Secretary of information received under this paragraph shall be subject to any national security or other restrictions that apply to the agency head furnishing the information.*

Section 304 of that Act

SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

(a) SANCTUARY PROPOSAL.—

(1) NOTICE.—

(A) through (B) * * *

(C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Repre-

sentatives and the Committee on Commerce, Science, and Transportation of the Senate [a prospectus on the proposal which shall contain] *documents, including an executive summary, that provide—*

(i) through (ix) * * *

(2) ENVIRONMENTAL IMPACT STATEMENT.—* * *

(3) PUBLIC HEARING.—* * *

(4) TERMS OF DESIGNATION.—* * *

(5) FISHING REGULATIONS.—The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the United States [Fishery Conservation Zone] *exclusive economic zone* as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. *In preparing the fishing regulations, the Secretary shall cooperate with other appropriate fishery management authorities (including international, Federal, State, and Native American fishery management authorities with rights or responsibilities within the sanctuary to which the regulations would apply) at the earliest practicable stage.* Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.

(6) COMMITTEE ACTION.—After receiving the prospectus under subsection (a)(1)(C), the Committee on Merchant Marine and fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the [prospectus] *documents*. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the [prospectus] *documents*, either Committee issues a report concerning matters addressed in the [prospectus] *documents*, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

(b) TAKING EFFECT OF DESIGNATION.—

(1) NOTICE.—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit

such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. [The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published.] No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6). The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless—

(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

(B) in the case of a natural marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable; in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

(2) through (4) * * *

(c) * * *

(d) **INTERAGENCY COOPERATION.**—

(1) **REVIEW OF AGENCY ACTIONS.**—

(A) **IN GENERAL.**—*Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource or quality are subject to review by and consultation with the Secretary.*

(B) **AGENCY STATEMENTS REQUIRED.**—*Each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources and qualities at the earliest practicable time, but in no case later than ninety days before the final approval of the action unless both the Federal agency and the Secretary agree to a different schedule.*

(2) **SECRETARY'S RECOMMENDED ALTERNATIVES.**—*If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource or quality, the Secretary shall (within sixty days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources and qualities.*

(3) **RESPONSE TO RECOMMENDATIONS.**—*The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a detailed written statement explaining the reasons for that decision.*

(e) **REVIEW OF MANAGEMENT PLANS.** *Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this title.*

Section 305 of that Act

SEC. 305. APPLICATION OF REGULATIONS [AND INTERNATIONAL OBLIGATIONS.]; INTERNATIONAL NEGOTIATIONS AND COOPERATION.

(a) **REGULATIONS.**—**[The]** *This title and the regulations issued under section 304 shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—*

*(1) through (3) * * **

(b) **AREA OF APPLICATION AND ENFORCEABILITY.**—*The area of application and enforceability of this title and the regulations and permits issued under this title includes the United States 12-nautical-mile territorial sea and the United States exclusive economic zone.*

[(b)] (c) NEGOTIATIONS.—*The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.*

(d) **INTERNATIONAL COOPERATION.**—*The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this title and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.*

Section 306 of that Act

[SEC. 306. RESEARCH AND EDUCATION.

[The Secretary shall conduct research and educational programs as are necessary and reasonable to carry out the purposes and policies of this title.]

SEC. 306. PROHIBITED ACTIVITIES.

It is unlawful for any person to—

(1) violate this title or any regulation or permit issued under this title;

(2) refuse to allow any officer authorized to enforce this title to board a vessel subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this title or any regulation or permit issued under this title; or

(3) assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any lawful search or inspection.

Section 307 of that Act

SEC. 307. ENFORCEMENT.

(a) through (b) * * *

(c) CIVIL PENALTIES.—

(1) CIVIL PENALTY.—Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than ~~["\$50,000"]~~ *\$125,000* for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) * * *

(3) IN REM JURISDICTION.—A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation ~~[and may be proceeded against in any district court of the United States having jurisdiction]~~. *Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.*

(4) through (6) * * *

(d) FORFEITURE.—

(1) IN GENERAL.—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. *The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 312. None of those proceeds shall be subject to set-off.*

(2) through (4) * * *

(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary may use amounts received under this section in the form of civil penalties, forfeitures of property, and costs imposed under paragraph (2) to pay—

(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized

under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such property or sanctuary resource was seized; [and]

(B) a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or of any regulation or permit issued under this title[.];

(C) the reasonable and necessary costs for the enforcement of this title or of any regulation or permit issued under this title, including any necessary expenses for equipment, training, travel, witnesses, and contracting services for enforcement investigations or proceedings; and

(D) any valid liens or mortgages against any property that has been forfeited.

(2) * * *

(f) through (i) * * *

Section 309 of that Act

[SEC. 309. PROMOTION AND COORDINATION OF RESEARCH.

[The Secretary shall take such action as is necessary to promote and coordinate the use of national maritime sanctuaries for research purposes, including—

[(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and

[(2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research.]

SEC. 309. RESEARCH, MONITORING, AND EDUCATION.

(a) *IN GENERAL.*—The Secretary shall conduct research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of this title.

(b) *PROMOTION AND COORDINATION OF SANCTUARY USE.*—The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring, and education, including coordination with the National Estuarine Research Reserve System.

Section 311 of that Act

[SEC. 311. COOPERATIVE AGREEMENTS AND DONATIONS.

[(a) *COOPERATIVE AGREEMENTS.*—The Secretary may enter into cooperative agreements with any nonprofit organization

[(1) to aid promote interpretive, historical, scientific, and educational activities; and

[(2) for the solicitation of private donations for the support of such activities:

[(b) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title.]

SEC. 311. COOPERATIVE AGREEMENTS AND DONATIONS.

(a) COOPERATIVE AGREEMENTS, GRANTS, AND OTHER AGREEMENTS.—The Secretary may enter into cooperative agreements, grants, contracts, or other agreements with States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this title.

(b) AUTHORIZATION TO SOLICIT DONATIONS.—The Secretary may enter into such agreements with any nonprofit organizations authorizing the organization to solicit private donations to carry out the purposes and policies of this title.

(c) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title. For the purposes of Federal income, estate, and gift taxes, donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

Section 312 of that Act

SEC. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

(a) LIABILITY.—

(1) IN GENERAL.—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury. *Nothing in the Act of March 3, 1851 (46 U.S.C. 183 et seq.), shall in any way limit the liability of any person under this title.*

(2) * * *

(3) DEFENSES.—A person is not liable under this subsection if that person establishes that—

(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care; or

[(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

[(C) the destruction, loss, or injury was negligible.]

(B) the destruction or loss of, or injury to, the sanctuary resource was specifically authorized by a valid license or permit issued in accordance with Federal or State law and implementing regulations, and the activity was conducted in compliance with all terms and conditions of that license or permit.

(4) ADMINISTRATIVE COSTS.—The Secretary shall recover administrative costs and expenses, including direct and indirect costs of attorney time, necessary for, and incidental to, the response, the damage assessment and restoration planning, any restoration, replacement, or acquisition of the equivalent undertaken, and any actions necessary to recover damages for such activities.

(5) *INTEREST.*—The amounts recoverable in an action under this section shall include interest on the amounts recoverable as damages and response costs as defined under section 302 and any regulations issued thereunder. Interest (including prejudgment interest) is in addition to damages and response costs as defined under section 302 and any regulations issued thereunder. Such interest shall be paid for the period beginning on the date of the destruction, loss, or injury involved. The accrued interest shall be used for the purposes established under this section.

(6) *CALCULATION OF INTEREST.*—The interest paid under this section shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(d) *USE OF RECOVERED AMOUNTS.*—Response costs and damages recovered by the Secretary under this section and civil penalties under section 307 shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

(1) through (2) * * *

[(3) *USE OF CIVIL PENALTIES.*—Amounts recovered under section 307 in the form of civil penalties shall be used by the Secretary in accordance with section 307(e) and paragraphs (2)(B) and (C) of this subsection.]

[(4)] (3) *FEDERAL-STATE COORDINATION.*—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement, and an agreement entered into by the Secretary and the Governor of that State. However, if the Secretary and the Governor have not entered into an agreement within 120 days after the date of recovery of those amounts, the Secretary may use those amounts under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement.

Section 313 of that Act

[SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to the Secretary to carry out this title the following:

[(1) *GENERAL ADMINISTRATION.*—For general administration of this title—

[(A) \$1,800,000 for fiscal year 1989;

[(B) \$1,900,000 for fiscal year 1990;

[(C) \$2,000,000 for fiscal year 1991; and

[(D) \$2,100,000 for fiscal year 1992.

[(2) *MANAGEMENT OF SANCTUARIES.*—For management of national marine sanctuaries designated under this title—

[(A) \$2,000,000 for fiscal year 1989;

[(B) \$2,500,000 for fiscal year 1990;

[(C) \$4,000,000 for fiscal year 1991; and

[(D) \$3,250,000 for fiscal year 1992.

[(3) SITE REVIEW AND ANALYSIS.—For review and analysis of sites for designation under this title as national marine sanctuaries—

[(A) \$450,000 for fiscal year 1989;

[(B) \$500,000 for fiscal year 1990;

[(C) \$550,000 for fiscal year 1991; and

[(D) \$600,000 for fiscal year 1992.]

SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this title \$10,000,000 for fiscal year 1993, \$12,500,000 for fiscal year 1994, and \$15,000,000 for fiscal year 1995.

Section 314 of that Act

SEC. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS.

(a) through (c) * * *

SEC. 315. ADVISORY COUNCILS.

(a) *ESTABLISHMENT.*—*The Secretary may establish one or more Advisory Councils in order to obtain assistance in the designation or management of one or more national marine sanctuaries.*

(b) *MEMBERSHIP.*—*Members of the Advisory Councils may be appointed for among—*

(1) members or officers of Federal or State agencies with management responsibilities for the environment.

(2) members of Regional Fishery Management Councils; and

(3) representatives of local industries, commercial user groups, conservation or other public interest organizations, scientific organizations, educational organizations, recreational user groups, or other persons interested in the protection of sanctuary resources and the multiple-use management of national marine sanctuaries.

(c) *ADMINISTRATION.*—*Each Advisory Council shall elect a chairperson and may establish subcommittees and adopt bylaws, rules, and such other administrative requirements and procedures as are necessary for the administration of its functions.*

(d) *STAFFING AND OTHER ASSISTANCE.*—*The Secretary may make available to an Advisory council such staff, information, and administrative services and assistance as the Secretary determines are reasonably required for such Advisory Council to carry out its functions.*